

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

TEXAS, WISCONSIN, ALABAMA,
ARKANSAS, ARIZONA, FLORIDA, GEORGIA,
INDIANA, KANSAS, LOUISIANA, PAUL
LePAGE, Governor of Maine, MISSISSIPPI, by
and through Governor Phil Bryant, MISSOURI,
NEBRASKA, NORTH DAKOTA, SOUTH
CAROLINA, SOUTH DAKOTA, TENNESSEE,
UTAH, and WEST VIRGINIA,

Plaintiffs,

v.

UNITED STATES OF AMERICA, UNITED
STATES DEPARTMENT OF HEALTH AND
HUMAN SERVICES, ALEX AZAR, in his
Official Capacity as SECRETARY OF HEALTH
AND HUMAN SERVICES, UNITED STATES
INTERNAL REVENUE SERVICE, and DAVID
J. KAUTTER, in his Official Capacity as Acting
COMMISSIONER OF INTERNAL REVENUE,

Defendants.

Civil Action No. 4:18-cv-00167-O

CALIFORNIA, CONNECTICUT, DISTRICT OF
COLUMBIA, DELAWARE, HAWAII,
ILLINOIS, KENTUCKY, MASSACHUSETTS,
MINNESOTA, NEW JERSEY, NEW YORK,
NORTH CAROLINA, OREGON, RHODE
ISLAND, VERMONT, VIRGINIA, AND
WASHINGTON,

Proposed Intervenor-Defendants.

MOTION FOR LEAVE TO APPEAR WITHOUT LOCAL COUNSEL

TO THE HONORABLE REED C. O'CONNER:

Intervenor-Defendants the States of California, Connecticut, District of Columbia,
Delaware, Hawaii, Illinois, Kentucky, Massachusetts, Minnesota, New Jersey, New York, North

Carolina, Oregon, Rhode Island, Vermont, Virginia, and Washington respectfully seek this Court's leave to participate in this litigation without local counsel as required under N.D. Tex. R. 83.10(a).

INTRODUCTION

1. Plaintiff Texas, represented by the Attorney General of Texas, and joined by Wisconsin, Alabama, Arkansas, Arizona, Florida, Georgia, Indiana, Kansas, Louisiana, Governor of Maine Paul LePage, Mississippi by and through Governor Phil Bryant, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Utah, and West Virginia, seek a declaration that the Patient Protection and Affordable Care Act (ACA) is unconstitutional, in whole or in part.

2. Defendants, who will be represented by the United States Department of Justice, are the United States of America, United States Department of Health and Human Services, Alex Azar, in his official capacity as Secretary of Health and Human Services, United States Internal Revenue Service, and David J. Kautter, in his official capacity as Acting Commissioner of Internal Revenue.

3. Under N.D. Tex. R. 83.11, an attorney appearing on behalf of the United States Justice Department or the Attorney General of the State of Texas is generally exempt from the local counsel requirement of N.D. Tex. R. 83.10.

4. Intervenor-Defendants seek to intervene due to their interest in protecting the ACA, which entitles them to receive billions of dollars for public health programs, while also decreasing the amount of money that the States must spend on healthcare costs for the uninsured.

5. Because the parties to this action will be exempt from the local counsel requirement, granting the same treatment to the Intervenor-Defendants will not deter from the Local Rule's goal of permitting the scheduling of hearings on short notice.

6. Accordingly, the Intervenor-Defendants respectfully seek leave to participate in this litigation without local counsel.

ARGUMENT AND AUTHORITIES

7. This case is unique in that parties to this action are exempt from the local rule requirement. Under N.D. Tex. R. 83.11 and unless the presiding judge directs otherwise, an attorney appearing on behalf of the United States Justice Department or the Attorney General of the State of Texas, and who is eligible pursuant to LR 83.9(a) to appear in this court, shall be exempt from the local counsel requirement of N.D. Tex. R. 83.10.

8. As such, no additional delay will result from granting the requested relief. As any hearing on short notice will require that other counsel also travel, no additional delay will come from counsel for the Intervenor-Defendants traveling to attend any hearing.

9. Moreover, counsel for the Intervenor-Defendants certify to the Court that they will be available for hearings called on short notice, including emergency hearings that may need to be held within twenty-four hours notice. Supervising Deputy Attorney General Kathleen Boergers and Deputy Attorney General Nimrod Elias each reside within 20 miles of two major airports: Oakland and San Francisco International airports, both of which have direct approximate three-hour and thirty minute flights to the Dallas/Fort Worth International Airport. Deputy Attorney General Neli Palma also lives within 20 miles of Sacramento International Airport which has direct approximate three-hour and fifteen minute flights to the Dallas/Fort Worth International Airport. They have each familiarized themselves with the Local Rules of the Northern District of Texas, and are prepared to abide by its rules and procedures.

10. As such, granting the relief requested will comport with the purpose of Rule 83.10 that counsel be present and available to argue a party's position at any hearing called by the presiding judge on short notice.

11. Although Local Rule 7.1(h) does not require a certificate of conference for this type of motion, counsel has conferred with counsel for Plaintiffs States regarding the relief requested here. The Plaintiff States do not oppose to this motion.

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PRAYER AND CONCLUSION

Wherefore, for the foregoing reasons, movants respectfully request that the Court enter an Order allowing them to appear without local counsel. They also seek leave to seek pro hac vice admission for their counsel to the Northern District of Texas. A proposed order is attached to this motion and also will be emailed to Chambers in word-processing format.

Dated: April 9, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JULIE WENG-GUTIERREZ
Senior Assistant Attorney General
KATHLEEN BOERGERS
Supervising Deputy Attorney General
NIMROD ELIAS
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/s/ Neli N. Palma
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Attorney General for the District of Columbia
ROBYN R. BENDER
Deputy Attorney General
VALERIE M. NANNERY
Assistant Attorney General
*Attorneys for Intervenor-Defendant the
District of Columbia*

DECLARATION OF NELI N. PALMA

I, Neli N. Palma, declare:

1. I am an attorney at law in good standing licensed to practice in all Courts of the State of California. I have been appointed and currently serve as a Deputy Attorney General in the Office of the Attorney General, State of California. In this capacity, I have been assigned to appear on behalf of the Intervenor-Defendants in this matter. I have personal knowledge of the facts and would testify competently to those set forth herein.

2. I live within 20 miles of Sacramento International Airport which has direct approximate three-hour and fifteen minute flights to the Dallas/Fort Worth International Airport. I certify to the Court that I will be available for hearings called on short notice, including emergency hearings that may need to be held within twenty-four hours notice.

3. Supervising Deputy Attorney General Kathleen Boergers and Deputy Attorney General Nimrod Elias, who are also assigned to this case, each reside within 20 miles of two major airports: Oakland and San Francisco International airports, both of which have direct approximate three-hour and thirty minute flights to the Dallas/Fort Worth International Airport. They too are available to appear for hearings called on short notice, including emergency hearings that may need to be held within twenty-four hours notice.

4. Each of the deputies assigned to this case, including myself, have familiarized themselves with the Local Rules of the Northern District of Texas, and we are each prepared to abide by its rules and procedures.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was signed on this date in Sacramento, California. Executed on this 9th day of April, 2018, at Sacramento, California.



NELI N. PALMA

CERTIFICATE OF CONFERENCE

I hereby certify that on April 6, 2018, my Supervising Deputy Attorney General, Kathleen Boergers, conferred with Darren McCarty, counsel for the Plaintiff States concerning the Intervenor-Defendants' (1) Motion to Intervene, and (2) Motion for Leave to Appear without Local Counsel. During that conference, Mr. McCarty indicated that while he had no opposition to the Motion for Leave to Appear without Local Counsel, he would oppose the Motion to Intervene. No conference was held with counsel for the Defendants to determine their position as to the motions since they have not yet appeared.

Dated: April 9, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JULIE WENG-GUTIERREZ
Senior Assistant Attorney General
KATHLEEN BOERGERS
Supervising Deputy Attorney General
NIMROD P. ELIAS
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Attorneys for Intervenor-Defendants

Dated: April 9, 2018

Respectfully submitted,

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*Attorneys for Intervenor-Defendant the
District of Columbia*

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

<u>Texas, et al.</u>	§	
<i>Plaintiff</i>	§	
	§	
	§	
v.	§	Case No. <u>4:18-cv-00167-O</u>
	§	
	§	
<u>United States of America, et al.</u>	§	
<i>Defendant</i>	§	

APPLICATION FOR ADMISSION *PRO HAC VICE*
(Complete all questions; indicate "N/A" if necessary.)

I. Applicant is an attorney and a member of the law firm of (or practices under the name of)
California Department of Justice, Office of the Attorney General, with offices at

1515 Clay Street, 20th Floor
(Street Address)

<u>Oakland</u>	<u>CA</u>	<u>94612</u>
(City)	(State)	(Zip Code)

<u>510-879-0011</u>	<u>510-622-2270</u>
(Telephone No.)	(Fax No.)

II. Applicant will sign all filings with the name Kathleen M. Boergers.

III. Applicant has been retained personally or as a member of the above-named firm by:

(List All Parties Represented)

State of California

to provide legal representation in connection with the above-styled matter now pending before the United States District Court for the Northern District of Texas.

IX. Applicant has filed for *pro hac vice* admission in the United States District Court for the Northern District of Texas during the past three (3) years in the following matters:

Date of Application:

Case No. And Style:

Not Applicable.

(If necessary, attach statement of additional applications.)

X. Local counsel of record associated with Applicant in this matter is

_____, who has offices at

(Street Address)

(City)

(State)

(Zip Code)

(Telephone No.)

(Facsimile No.)

XI. Check the appropriate box below.

For Application in a **Civil Case**



Applicant has read *Dondi Properties Corp. v. Commerce Savs. & Loan Ass'n*, 121 F.R.D.284 (N.D. Tex. 1988) (en banc), and the local civil rules of this court and will comply with the standards of practice adopted in *Dondi* and with the local civil rules.

For Application in a **Criminal Case**



Applicant has read and will comply with the local criminal rules of this court.

XII. Applicant respectfully requests to be admitted to practice in the United States District Court for the Northern District of Texas for this cause only. Applicant certifies that a true and correct copy of this document has been served upon each attorney of record and the original upon the clerk of court, accompanied by a \$25.00 filing fee, on this the 9 day of April, 2018.

Kathleen M. Boergers

Printed Name of Applicant

Kathleen Boergers
Signature



THE STATE BAR OF CALIFORNIA

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1617

TELEPHONE: 888-800-3400

CERTIFICATE OF STANDING

April 6, 2018

TO WHOM IT MAY CONCERN:

This is to certify that according to the records of the State Bar, KATHLEEN MARIE BOERGERS, #213530 was admitted to the practice of law in this state by the Supreme Court of California on June 1, 2001; and has been since that date, and is at date hereof, an ACTIVE member of the State Bar of California; and that no recommendation for discipline for professional or other misconduct has ever been made by the Board of Trustees or a Disciplinary Board to the Supreme Court of the State of California.

THE STATE BAR OF CALIFORNIA

Denise Velasco
Custodian of Membership Records

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

<u>Texas, et al.</u>	§	
<i>Plaintiff</i>	§	
	§	
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v.	§	Case No. <u>4:18-cv-00167-O</u>
	§	
	§	
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<i>Defendant</i>	§	

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(Complete all questions; indicate "N/A" if necessary.)

I. Applicant is an attorney and a member of the law firm of (or practices under the name of)
California Department of Justice, Office of the Attorney General, with offices at

1300 I Street, 12th Floor
(Street Address)

<u>Sacramento</u>	<u>CA</u>	<u>95814</u>
(City)	(State)	(Zip Code)

<u>916-210-7522</u>	<u>916-322-8288</u>
(Telephone No.)	(Fax No.)

II. Applicant will sign all filings with the name Neli N. Palma.

III. Applicant has been retained personally or as a member of the above-named firm by:

(List All Parties Represented)

California, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Massachusetts, New Jersey, New York,
North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, District of Columbia.

to provide legal representation in connection with the above-styled matter now pending before the United
States District Court for the Northern District of Texas.

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(If necessary, attach statement of additional applications.)

X. Local counsel of record associated with Applicant in this matter is

_____, who has offices at

(Street Address)

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(State)

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(Telephone No.)

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XI. Check the appropriate box below.

For Application in a **Civil Case**



Applicant has read *Dondi Properties Corp. v. Commerce Savs. & Loan Ass'n*, 121 F.R.D.284 (N.D. Tex. 1988) (en banc), and the local civil rules of this court and will comply with the standards of practice adopted in *Dondi* and with the local civil rules.

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Neli N. Palma

Printed Name of Applicant



Signature



THE STATE BAR OF CALIFORNIA

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1617

TELEPHONE: 888-800-3400

CERTIFICATE OF STANDING

April 6, 2018

TO WHOM IT MAY CONCERN:

This is to certify that according to the records of the State Bar, NELI NIMA PALMA, #203374 was admitted to the practice of law in this state by the Supreme Court of California on December 6, 1999; and has been since that date, and is at date hereof, an ACTIVE member of the State Bar of California; and that no recommendation for discipline for professional or other misconduct has ever been made by the Board of Trustees or a Disciplinary Board to the Supreme Court of the State of California.

THE STATE BAR OF CALIFORNIA

Denise Velasco
Custodian of Membership Records

Certificate of Service

On April 9, 2018, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5 (b)(2).

s/Michelle Schoenhardt
Michelle Schoenhardt